Supreme Court, U.S.
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No. 96-299

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

TRANS WORLD AIRLINES, INC., and WILLIAM D. HART and GARY D. DILLEY, as Members of the Retirement Board of the Retirement Plan for Pilots of Trans World Airlines, Inc.,

Petitioners,

v.

ANTHONY V. SINICROPI, H.O. VAN ZANDT, and W.A. MURPHEY, as Members of the Retirement Board of the Retirement Plan for Pilots of Trans World Airlines, Inc., WILLIAM L. MEUSEL, JR., and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION OF RESPONDENTS H.O. VAN ZANDT, W.A. MURPHEY, WILLIAM L. MEUSEL, JR., AND AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

EUGENE B. GRANOF *
JERRY D. ANKER
AIR LINE PILOTS ASSOCIATION
535 Herndon Parkway
Herndon, Virginia 20170
(703) 481-2421

Attorneys for Respondents H.O. Van Zandt, W.A. Murphey, William L. Meusel, Jr., and Air Line Pilots Association, International

* Counsel of Record

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REASONS FOR DENYING THE PETITION

The petition for certiorari seeks review of an issue that has long been settled in the courts of appeals, and as to which there is no conflict between the circuits. The decision below is entirely consistent not

only with all relevant precedents, but also with the clear language of the applicable statutes. There is, accordingly, no need for review by this Court.

The sole issue in this case is whether an award of a System Board of Adjustment under the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151, *et seq.* (1994), which is normally subject to an extremely narrow standard of judicial review, becomes subject to a different and broader standard under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, *et seq.* (1994), if it happens to involve the interpretation or application of a collectively bargained pension plan. The court of appeals, in a brief *per curiam* opinion, held that the limited RLA standard is controlling. App. 1a-2a.*

The decision below is consistent with all others that have addresed this issue. *Wheeler v. St. Louis Southwestern Railway Co.*, 90 F.3d 327, 330 (8th Cir. 1996); *Long v. Flying Tiger Line, Inc.*, 994 F.2d 692, 695 (9th Cir. 1993); *Bowe v. Northwest Airlines, Inc.*, 974 F.2d 101, 103 (8th Cir. 1992), *cert. denied*, 113 S.Ct. 1602 (1993); *Beard v. Carrollton R.R.*, 893 F.2d 117, 123 (6th Cir. 1989); *Air Line Pilots Ass'n Int'l v. Northwest Airlines, Inc.*, 627 F.2d 272, 275-76 (D.C. Cir. 1980); *Bonin v. American Airlines, Inc.*, 621 F.2d 635, 638-39 (5th Cir. 1980); *de la Rosa Sanchez v. Eastern Airlines, Inc.*, 574 F.2d 29, 33 (1st Cir. 1978); *Everett v. USAir Group, Inc.*, 927 F. Supp. 478, 483 (D.D.C. 1996); *Porter v. Atchison, Topeka and Santa Fe Ry. Co.*, 768 F. Supp. 571, 574 (N.D. Tex. 1991); *Eisenberg v. Trans*

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* References to the Petition's appendix are denoted "App. ——." References to the Petition itself are denoted "Pet. ——."

World Airlines, Inc., 654 F. Supp. 125, 128 (S.D. Fla. 1987), *aff'd without opinion*, 875 F.2d 872 (11th Cir. 1989). We are aware of no authority to the contrary, and petitioners cite none.

These decisions applied the RLA's statutory command that System Board awards are "final and binding," and can be judicially set aside only for (1) failure of the Board to comply with the requirements of the RLA, (2) failure of the Board to conform or confine itself to matters within the scope of its jurisdiction, and (3) fraud or corruption. 45 U.S.C. § 153, First (m), (p), and (q), § 184. By contrast, § 514(d) of ERISA states in pertinent part that "[n]othing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . ." 29 U.S.C. § 1144(d). The federal courts have been unanimous in concluding that ERISA was not intended to displace or modify the mandatory and exclusive procedure established by the RLA for final and binding arbitration of grievance disputes, an essential element of which is the extremely narrow scope of judicial review of System Board awards.

Petitioners contend — erroneously — that "[t]he court of appeals' holding directly conflicts with this Court's decision" in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989). Pet. 11. In *Bruch* the Court addressed the issue of the appropriate standard of judicial review of a denial of benefits by a plan administrator. *Bruch* does not speak to the entirely different issue of the appropriate standard of review of a benefits determination by an arbitrator, much less by a System Board under the RLA. Hence, *Bruch* is plainly inapposite here.

Petitioners further contend that "ERISA addresses broader concerns that are not adequately represented in the RLA process." Pet. 14. Whatever the merits of that contention in other cases, it has none here. As the district court stated (App. 26a):

> . . . the only issue in this case is whether or not TWA and ALPA agreed that an individual in Meusel's situation is entitled to the Disputed Benefit. TWA believes it never agreed to pay such a benefit in such a situation; ALPA believes it did. The answer to that dispute lies solely in the terms and meaning of the Plan itself, and ERISA has nothing to say on the matter. Congress has expressed no opinion on the desired outcome of a dispute such as this, and thus no policy concern flowing from ERISA can over-ride the clear policy of the RLA that "minor" disputes be resolved exclusively through mandatory arbitration. Since I have determined that plaintiffs' claims present a "minor" dispute, an ERISA claim cannot be maintained. [footnote omitted].

CONCLUSION

For all of the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

EUGENE B. GRANOF *
JERRY D. ANKER
AIR LINE PILOTS ASSOCIATION
535 Herndon Parkway
Herndon, Virginia 20170
(703) 481-2421
Attorneys for Respondents H.O. Van Zandt, W.A. Murphey, William L. Meusel, Jr., and Air Line Pilots Association, International

* Counsel of Record